IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9071 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TAKHABHAI GANDABHAI BHARWAD AND OTHERS

Versus

ADDITIONAL CHIEF SECRETARY (APPEALS) AND OTHERS

Appearance :
MR PRAKASH K JANI for the Petitioners

MR.A.J.DESAI, learned Assistant Government Pleader for the respondents

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

Date : 07/12/2005

ORAL JUDGMENT:

What is challenged in this petition under Article 226 of the Constitution is the order dated 25.10.1993 passed by the Deputy Collector, Ahmedabad(Annexure “G”) as confirmed by the Collector on 30.4.1994 (Annexure “I”) and the revisional order dated 14.7.1997 (Annexure “K”) passed by the State Government in the Revenue Department(Appeals) cancelling the grant of agricultural land admeasuring 5261 Sq.Mts. in Survey No.264 in Village Odhav of Ahmedabad City.

2. There is no dispute about the fact that the land in question was granted to the petitioners as a New Tenure land for carrying on agricultural operations. On 17.2.1987 the Deputy Collector issued notice to the petitioners calling upon them to show cause why necessary steps should not be taken against the petitioners for breach of the conditions inasmuch as the petitioners had kept the land fallow without any prior permission for two years. The petitioners submitted their reply pointing out that the land is surrounded by chemical factories and other factories and that on account of their effluents and also on account of irregular rains it is not possible to carry on agricultural operations on the land in question. After considering the said reply, the Deputy

Collector passed order dated 4.12.87 (Annexure “D”)withdrawing the notice.

Again thereafter by notice dated 29.5.1993 (Annexure “E”) the Deputy Collector called upon the petitioners to show cause why the petitioners should not be removed from the land in question under Section 79A of the Bombay Land Revenue Code for breach of conditions. The petitioners submitted their reply and pointed out that the petitioners had already made applications on 16.3.1985 and 22.11.1986 and also on 10.4.1991 and 4.5.1993 for granting N.A.permission and that in view of the effluent being discharged by the surrounding factories and the land being a low lying area it was not fit for agricultural operations. After considering the said reply, the Deputy Collector passed impugned order dated 25.10.1993 for taking over possession of the land in question alongwith the construction thereon. It appears from the impugned order dated 25.10.1993 that the Deputy Collector was also of the view that the petitioners had not made any attempt to carry on agricultural operations from 1985-86 onwards and that there was no documentary evidence produced to show that applications for N.A.permission were made. The appeal and revision filed by the petitioners before the

Collector and the State Government respectively came to be dismissed. Hence this petition.

3. At the hearing of this petition, Mr.P.K.Jani, learned counsel submitted that the land was given to the petitioners for agricultural purposes, but the petitioners' case that on account of the industrial effluents being discharged by the surrounding factories, the land had become incapable of being cultivated has not been disputed by any of the authorities. As regards the evidence for having made application for N.A.permission, reference was made to Annexures “A” and “B” being applications dated 16.3.1985 and 22.10.1986 made to the Deputy Collector, Ahmedabad and Mamlatdar respectively indicating that the petitioners had agreed to pay the premium for putting the land to N.A.use. It is further submitted by Mr.Jani that in his affidavit in reply, the Deputy Collector has stated that the petitioners' application for N.A.permission was not considered on account of the fact that No Objection Certificate was required to be obtained from the competent authority under the Urban Land (Ceiling And Regulation) Act,1976. He, therefore, submitted that now that the ULC Act has been repealed and the fact that the

land is surrounded by factories discharging industrial effluent is not controverted, the respondents ought to consider the petitioners' application for N.A.permission.

4. On the other hand, Mr. A.J.Desai, learned Assistant Government Pleader has submitted that the land was granted to the petitioners for agricultural purposes and since it is not possible to carry on agricultural activities on the land in question right from 1985-86 onwards, no fault may be found with the decision of the authorities to resume the land by cancelling the grant earlier made in favour of the petitioners.

5. Having heard learned counsel for the parties, it appears that there is no dispute about the fact that the land was granted to the petitioners for agricultural purposes. However, if inability of the grantee to use the land for agricultural purposes is always to be made a ground for cancelling the grant, in no case a grantee of agricultural land as a new tenure land would ever be able to obtain N.A.permission. Since such land is granted as a New Tenure land, as and when the grantee applies for N.A.permission, the Government would be justified in demanding premium because the grantee who is allotted

land at a nominal or concessional price, can not be allowed to make profit by putting the land to use for N.A.purpose.

6. As regards the applications made for N.A.permission, the petitioners have produced application dated 16.3.1985 made to the Deputy Collector, Ahmedabad and application dated 22.10.1986 made to the Mamlatdar, Ahmedabad at Anneuxres “A” and “B” to the petition. The Deputy Collector in his affidavit dated 2.12.1999 has not stated that the said applications were not received by the concerned officers nor is there denial of the subsequent applications dated 10.4.1991 and 4.5.1993 made to the Collector for N.A.permission. In fact, reference was made to the said applications in the petitioners' memo of Appeal being N.A.Appeal No.176/93. So also, in the Collector's order dated 30.4.1994 also reference is made to the petitioners' case that they had made applications for N.A.permission. The Collector, however, brushed aside the said contention by merely stating that the petitioners have not taken further steps for obtaining N.A.permission. On the one hand, petitioners' case that they have made application for N.A.permission has not been specifically controverted and on the other hand when

the authorities had initiated proceedings for cancellation of the grant, it is obvious that no progress would be made in the matter of N.A.permission.

7. In view of the above discussion, the impugned orders passed by the Deputy Collector, Ahmedabad as confirmed by the Collector and the State Government in Revision deserve to be quashed and set aside. In view of the fact that the land is in the Odhav area of Ahmedabad City and the land is admittedly surrounded by factories discharging industrial effluent, it would not be possible for the petitioners to carry on agricultural activities. Hence, if the petitioners make an application for N.A.permission, now that the provisions of the U.L.C.Act have already been repealed, there would not be any impediment to considering the petitioners' application for N.A. permission and the authorities will be able to stipulate premium in accordance with law. Hence the apprehension that the petitioners will make undue profit out of the land granted for agricultural purposes will also not survive. Looking to the location of the land, it would be open to the authorities to consider whether the petitioners should pay the premium in cash or whether the petitioners should part with a portion of the land

which may go to the Government by way of premium.

8. Subject to the aforesaid observations, the petition is allowed. The impugned orders at Annexures “G”, “I” and “K” are quashed and set aside and if the petitioners make an application for putting the land bearing Survey No.264 admeasuring 5261 Sq.Mts. in village Odhav, Ahmedabad City to non-agricultural use, the respondents and the concerned authorities shall consider such application in accordance with law and in light of the observations made in this judgment.

Rule is made absolute accordingly. Direct service is permitted.

(M.S.Shah,J)

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